

SENATE BILL No. 562

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-14-57; IC 34-30-2.

Synopsis: Authorization procedures for disinterment. Provides that the remains of a deceased human being shall not be removed from a cemetery without written consent from one of the following classes of individuals, in order of priority: (1) The spouse at the time of the deceased's death. (2) A surviving adult child of the deceased. (3) A surviving parent of the deceased. (3) An individual in the next degree of kinship to the deceased under state laws governing intestate succession. (Current law requires the written consent of the deceased's: (1) spouse; or (2) in the case of a deceased minor child, parents.) Specifies that if more than one individual in the same class survives the deceased, the requirement for written consent is satisfied if: (1) any individual in the class consents to the proposed removal; and (2) the state department of health (department) does not receive an objection to the removal from any other individual in the class. Makes conforming changes to provisions allowing: (1) the required consent to be waived under certain circumstances; (2) a coal company to remove human remains from property owned or leased by the coal company; and (3) the removal of human remains from a cemetery plot for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery. Eliminates provisions requiring the department to take certain actions before authorizing the removal of human remains. Provides that a: (1) licensed funeral director; or (2) cemetery owner; is not liable in an action brought by a person because of the removal of a deceased's remains unless the licensed funeral director or the cemetery owner had actual notice that a representation made in a required written consent was untrue.

Effective: July 1, 2007.

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January 23, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.



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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 562

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-14-57-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this section, **"removal" or "removed"** refers to the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(b) Except as provided in subsection (e) **and sections 4 and 5 of this chapter**, the remains, either cremated or uncremated, of a deceased human shall not be removed from a cemetery without:

(1) a written order:

(A) **that is** issued by the state department of health; **and**

(B) **that authorizes the removal of the deceased's remains;**

(2) the written consent of:

(A) the owner of the cemetery; or

(B) the owner's representative; and

(3) the written consent of **a person or persons referred to in one**

(1) of the following clauses, which are listed according to priority:

(A) **The individual who was** the spouse of the deceased at

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- 1 the time of the deceased's death. or
 2 (B) the parents of the deceased in the case of a deceased minor
 3 child;
 4 authorizing the disinterment, disinterment, or disinterment.
 5 (B) The surviving adult child of the deceased. If there is
 6 more than one (1) surviving adult child of the deceased, the
 7 requirement for written consent under this subdivision is
 8 satisfied if:
 9 (i) any one (1) of the surviving adult children provides
 10 written consent to the removal of the deceased's
 11 remains;
 12 (ii) the consent provided under item (i) confirms that all
 13 other surviving adult children of the deceased have been
 14 notified of the proposed removal of the deceased's
 15 remains; and
 16 (iii) the state department of health does not receive a
 17 written objection to the proposed removal from any of
 18 the deceased's surviving adult children.
 19 (C) The surviving parent of the deceased. If the deceased
 20 is survived by both parents, the requirement for written
 21 consent under this subdivision is satisfied if:
 22 (i) either surviving parent provides written consent to
 23 the removal of the deceased's remains; and
 24 (ii) the state department of health does not receive a
 25 written objection to the proposed removal from the other
 26 surviving parent.
 27 (D) The individual in the next degree of kinship to the
 28 deceased under IC 29-1-2-1. If more than one (1)
 29 individual of the same degree of kinship is surviving, the
 30 requirement for written consent under this subdivision is
 31 satisfied if:
 32 (i) any individual of that degree of kinship provides
 33 written consent to the removal of the deceased's
 34 remains; and
 35 (ii) the state department of health does not receive a
 36 written objection to the proposed removal from any
 37 other surviving individual in the same degree of kinship.
 38 (c) Before issuing a written authorization under subsection (b), the
 39 state department of health shall do the following:
 40 (1) Obtain written evidence of the legal ownership of the property
 41 from which the remains will be removed.
 42 (2) Send written notice to the department of natural resources;

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division of historic preservation and archeology, of the time, date, and place from which the remains will be removed.

~~(3)~~ (1) Obtain written evidence that a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal ~~occurred~~: **occurs**.

~~(4)~~ Obtain written evidence that a notice of the proposed removal has been published at least five ~~(5)~~ days before a written order is issued by the state department of health in a newspaper of general circulation in the county where the removal will occur.

~~(5)~~ (2) Obtain a copy of:

(A) the written consent required under subsection (b)(3); or

(B) a court order obtained by a person under subsection (d).

(d) If the written consent of

~~(1)~~ the spouse of the deceased; or

~~(2)~~ the parents of the deceased in the case of a deceased minor;

an individual authorized under subsection (b)(3) to give consent is not available, a person who has made a request under this section to the state department of health may petition a court to determine whether to waive the consent requirement of subsection (b)(3). In determining whether to waive the requirement, the court shall consider the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased. In a proceeding under this subsection, the court may not order the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(e) This subsection applies only if the human remains are on property owned or leased by a coal company. The remains, either cremated or uncremated, of a deceased human may be removed from a cemetery by a coal company if the coal company obtains a court order authorizing the disinterment, disentombment, or disinurnment. Before issuing a court order under this subsection, a court must conduct a hearing and be satisfied as to the following:

(1) That the property is owned or leased by the coal company.

(2) That the coal company has obtained the written consent of

~~(A)~~ the spouse of the deceased; or

~~(B)~~ the parents of the deceased in the case of a deceased minor child;

authorizing the disinterment, disentombment, or disinurnment: an individual authorized to give consent under subsection (b)(3).

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If the consent of an individual authorized to give consent under subsection (b)(3) is not available, the court may waive the requirement after considering the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased.

(3) That the department of natural resources, division of historic preservation and archeology, has received at least five (5) days written notice of the time, date, and place of any hearing under this subsection. The notice must describe the proposed place from which the remains will be removed.

(4) That a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal occurred: occurs.

(5) That the coal company has caused a notice of the proposed removal to be published at least five (5) days before the hearing in a newspaper of general circulation in the county where the removal will occur.

(6) That the coal company will notify the department of natural resources, division of historic preservation and archeology, after the hearing of the proposed time and date when the remains will be removed.

(f) A:

(1) licensed funeral director; or

(2) cemetery owner;

is not liable in an action brought by any person because of the removal of a deceased's remains under a written consent described in subsection (b)(3) or (e)(2) unless the licensed funeral director or the cemetery owner had actual notice before or at the time of the removal that a representation made in the consent described in subsection (b)(3) or (e)(2) was untrue.

(g) The state department of health may adopt rules under IC 4-22-2 to implement this section.

SECTION 2. IC 23-14-57-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) The remains of a deceased human interred, entombed, or inurned in a plot in a cemetery may be removed from the plot for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery with:

(1) the consent of the owner of the cemetery; and

(2) the written consent of

(A) the surviving spouse in the case of a deceased married

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person; or

(B) ~~the surviving parents in the case of a deceased minor child;~~
an individual authorized to give consent under section 1(b)(3)
of this chapter.

(b) If the consent of:

(1) the owner of the cemetery; or

(2) a person from whom consent is required under subsection

(a)(2);

~~can not~~ **cannot** be obtained, the remains of a deceased human can be removed for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery only under a judgment of the circuit or superior court with jurisdiction in the county in which the cemetery is located.

SECTION 3. IC 34-30-2-91.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 91.2. IC 23-14-57-1 (Concerning licensed funeral directors and cemetery owners for the removal of human remains performed upon authorization of next of kin).**

SECTION 4. IC 34-30-2-91.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 91.3. IC 23-14-57-3 (Concerning cemetery owners for the removal of human remains from a plot, building, or structure for which the purchase price is past due and unpaid).**

SECTION 5. IC 34-30-2-91.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 91.4. IC 23-14-57-8 (Concerning cemetery owners for the removal or reinterment, reentombment, or reinurnment of human remains).**

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